

Internal Revenue Service

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Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B07

PLR-135494-06

Date:

July 19, 2007

Legend

Grantor 1 =

Grantor 2 =

Trust 1 =

Trust 2 =

Trust 3 =

Date 1 =

Child =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Statute =

Dear

This letter responds to your letter, dated July 19, 2006, and subsequent correspondence, submitted on behalf of certain trusts, requesting rulings under §§ 61, 1001, 1015, 1223 and 2601 of the Internal Revenue Code.

Grantor 1 created Trust 1, Trust 2, and Trust 3 on Date 1. Trust 1 is for the benefit of Child, Child's spouse, and Grandchild 1. Trust 2 is for the benefit of Child, Child's spouse, and Grandchild 2. Trust 3 is for the benefit of Child, Child's spouse, and Grandchild 3.

Grantor 2 created Trust 4, Trust 5, and Trust 6 on Date 1. Trust 4 is for the benefit of Child, Child's spouse, and Grandchild 1. Trust 5 is for the benefit of Child, Child's spouse, and Grandchild 2. Trust 6 is for the benefit of Child, Child's spouse, and Grandchild 3.

Grantor 1 created Trust 7 on Date 2. Trust 7 became irrevocable on the death of Grantor 1 on Date 3. Trust 7 is for the benefit of Child and his family.

Grantor 2 died on Date 4. Child died on Date 5. Child's spouse and all three grandchildren are still living. Grandchild 1 is married and has two children; Grandchild 2 is married and has one child; Grandchild 3 is married and has five children. Date 1, Date 2, and Date 3 are before September 23, 1985.

Each trust is administered for tax purposes as a separate trust and files tax returns under its distinct taxpayer identification number. For convenience, Trust 1, Trust 2, and Trust 3 pool their assets in one investment account and share equally in income, expenses, gains and losses. Similarly, Trust 4, Trust 5, and Trust 6 pool their assets in one investment account and share equally in income, expenses, gain and losses.

The terms of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 are identical. Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 continue until the death of Child, Child's spouse, and the grandchild for whom the trust is held. Each grandchild has a testamentary limited power of appointment to appoint to a class consisting of his or her spouse and issue. The last surviving original individual trustee is deceased. The trust instruments direct that, upon the death of the last surviving original individual trustee, the adult beneficiaries of the trust shall appoint a successor corporate trustee, who shall serve with the remaining individual trustees. As the remaining individual trustees die or resign, the trust instruments provide that they are not to be replaced so that the corporate trustee will become the sole trustee. Article Second, section 1 of each trust instrument provides in relevant part that the trustees may transfer, convey and dispose of the property at any time. Article Second, section 3 provides the trustees have the power and authority to make, execute and deliver any and all deeds, assignments,

conveyances and such other instruments as may be necessary or proper to carry out the powers herein granted to them, all of which may be exercised by them without the order or approval of any court.

Article Second, paragraph 2(a) of the Trust 7 trust agreement provides in relevant part that the trust will be held for the benefit of Child during his life. Upon Child's death, paragraph 2(c) provides that the remaining trust shall be held for the benefit of Child's spouse. Upon the death of Child's spouse, the trust shall be divided into separate trusts, one each for the benefit of Grandchild 1, Grandchild 2, and Grandchild 3, or the living children of any deceased grandchild. Article Fifth, paragraph 4 provides the trustees have the power and authority to make, execute and deliver any and all deeds, assignments, conveyances and such other instruments as may be necessary or proper to carry out the powers herein granted to them, all of which may be exercised by them without the order or approval of any court.

Collectively, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 constitute the "original trusts." The trustees will create Trust A, Trust B, Trust C and Trust D (collectively, the "new trusts") under the authority of State Statute and the terms of the original trusts. Trust A will be held for the primary benefit of Grandchild 1 and will consist of the merged assets of Trust 1 and Trust 4. Trust B will be held for the primary benefit of Grandchild 2 and will consist of the merged assets of Trust 2 and Trust 5. Trust C will be held for the primary benefit of Grandchild 3 and will consist of the merged assets of Trust 3 and Trust 6. Trust D will be held for the benefit of Child's spouse, Grandchild 1, Grandchild 2, and Grandchild 3 and will consist of the assets of Trust 7.

Except for the deletion of Child, who is deceased, and the trustee provisions, the dispositive provisions of the new trusts will be identical in all respects to the existing provisions in the original trusts. Accordingly, the new trusts will have the same vesting date as the original trusts. The trustee administrative provisions in each of the new trusts will be amended to permit the surviving trustees to continue to appoint individuals as successor trustees whenever there is a vacancy. In addition, the new trusts will allow the trustees to calculate individual trustees' fees under an external standard that sets a ceiling on trustee compensation. The terms of the new trusts will require the new trustees may not be related or subordinate to the family of Child or Child's spouse. No beneficiary or potential beneficiary of the new trusts may serve as a trustee.

You have requested the following rulings with respect to the creation of the new trusts and the merger of trust assets: (1) the original trusts were irrevocable on September 25, 1985, and therefore exempt from the GST tax; (2) the proposed transactions will not result in a constructive addition and will not cause the new trusts to be subject to the GST tax; (3) the proposed transactions will not cause the original trusts, the new trusts, or any beneficiary to recognize gain or loss under §§ 61 or 1001;

(4) each asset transferred to a new trust will have the same basis and holding period as it had in the original trust.

Rulings 1 and 2

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term “generation-skipping transfer” to include a taxable distribution, taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax provisions do not apply to any GST under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor’s gross estate under §§ 2038 and 2042. In the present case, the original trusts are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only

indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

In this case, the original trusts are generation-skipping trusts because they provide for distributions to more than one generation of beneficiaries below the grantor's generation. Date 1, Date 2, and Date 3 are prior to September 25, 1985, and the original trusts were irrevocable on September 25, 1985. The original trusts therefore, are exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

The proposed creation of the new trusts and merger of trust assets will result in four new trusts. Because the terms of the new trusts will be the same as the terms of the original trusts, the proposed creation of the new trusts and the allocation of assets among the new trusts do not shift a beneficial interest to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the proposed transaction does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Based on the facts submitted and representations made, we conclude that the proposed creation of the new trusts and merger of the original trust assets will not affect the original trusts' status as exempt from the GST tax. As a result, the proposed transaction will not constitute a constructive addition and will not cause a distribution from, or termination of any interest in, the original trusts or any of the new trusts to be subject to the GST tax.

Rulings 3 and 4

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1015(b) provides that if property is acquired by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by transfer in trust (other than by transfer in trust by gift, bequest, or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased by the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by transfer in trust, this basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to termination of the trust and distribution of the property, or thereafter.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person, if under chapter 1 of subtitle A such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

In Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), the Supreme Court of the United States ruled on the elements necessary to determine that, under § 1001, a sale or exchange resulting in realization of gain or loss had occurred. The Court held that realization under § 1001 required (1) a sale, exchange, or other disposition, and (2) in the case of an exchange, the receipt of property that was "materially different" from the property disposed of.

In this case, State Statute clearly authorizes the consolidation or merger of trusts by the trustees where the merger or consolidation is in the best interests of the beneficiaries. Moreover, the terms of the trust instruments establishing the original trusts authorize the trustees to execute the necessary documents in order to carry out the powers granted the trustees with respect to the transfer of assets from the trusts. By virtue of the trust powers granted to the trustees under the State Statute and the original trust instruments, the trustees of the original trusts are authorized to merge the assets into the new trusts and to transfer trust assets from the original trusts to the new trusts. Consequently, the beneficiaries of the new trusts are acquiring their interests in the new trusts by reason of the exercise of the trustees' existing authority under state law to merge or consolidate the original trusts and to transfer the trust assets in furtherance of this merger. The beneficiaries are not therefore acquiring their interests in the new trusts as a result of the exchange of their interests in the original trusts, or as the result of an exchange of interests between themselves. Accordingly, there does not appear to be any reciprocal exchange involving the legal rights and entitlements of the beneficiaries under the trusts here. Because no "exchange" has occurred for purposes

of § 1001, it is unnecessary to analyze whether the “materially different” standard has been satisfied.

We therefore conclude that the proposed mergers of the original trusts into the new trusts, and the transfer of assets from the original trusts to the new trusts, will not cause the original trusts, the new trusts, or any of the income beneficiaries to recognize any gain or loss under § 1001 from a sale or other disposition of property. Because § 1001 does not apply to the division of Trust 1 assets, under § 1015 the basis of the trust assets will be the same after the proposed transaction as the basis of those assets in the original trusts. Furthermore, pursuant to § 1223(2) the holding periods of the assets in the hands of the new trusts will include the holding periods of the assets in the hands of the original trusts.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent your attorney.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Senior Technician Reviewer, Branch 2
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes